

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/28/2013

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Agreement with Alabama Department of Transportation

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Reimbursable Agreement with the Alabama Department of Transportation for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Widening and Relocation of Church Street, Phase I, Project Nos. STPHV-4500(200) & 65-01-RD05. This agreement supersedes agreement adopted and approved by the City Council on the 25th day of August, 2011, by Resolution No. 11-616.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Agreement between City and ALDOT for the relocation of utilities for modifications to the Church Street, Phase I project due to a revision to ALDOT's utility agreement form. This agreement supersedes agreement adopted and approved by the City Council on the 25th day of August, 2011, by Resolution No. 11-616. Account Nos. 23-6500-0811-8178 & 23-6500-3098-8178.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy McArthur

Date: 2/19/13

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **2/28/2013**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Reimbursable Agreement**

Document Name: **Church St PH I STPHV-4500() & COH 65-01-RD05**

City Obligation Amount: **\$1,832,223.59**

Total Project Budget: **\$1,832,223.59**

Uncommitted Account Balance: **0**

Account Number: **23-6500-0811-8178 & 23-6500-3098-8178**
0813

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Kathy Martin</i>	<i>2/19/13</i>
2) Legal	<i>Mary C. Carter</i>	<i>2/21/13</i>
3) Finance	<i>[Signature]</i>	<i>2/22/13</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement with the Alabama Department of Transportation for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Widening and Relocation of Church Street, Phase I, Project Nos. STPHV-4500(200) & 65-01-RD05, in the County of Madison, Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement supersedes agreement adopted and approved by the City Council on the 25th day of August, 2011, by Resolution No. 11-616. Revised agreement is substantially in words and figures similar to that document attached hereto and identified as "Agreement with State of Alabama Department of Transportation for Relocation of Utility Facilities on Private or Public Right-of-Way Work for Widening and Relocation of Church Street, Phase I, Project Nos. STPHV-4500(200) & 65-01-RD05" consisting of a total of six (6) pages plus one (1) additional page consisting of Exhibit "N", and the date of February 28, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 28th day of February, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 28th day of February, 2013.

Mayor of the City of Huntsville,
Alabama

REVISED
October 23, 2012

SAHD No. 2
Page 1 of 6

**REIMBURSABLE AGREEMENT
FOR RELOCATION OF UTILITY FACILITIES
ON PRIVATE OR PUBLIC RIGHT-OF-WAY**

	PROJECT NUMBER
<u> </u> Private Right-of-Way	Utilities <u> </u> STPHV-4500()/100059924
<input checked="" type="checkbox"/> Public Right-of-Way	Construction <u> </u> STPHV-4500()
	COH Project No. 65-01-RD05

THIS AGREEMENT is entered into by and between the State of Alabama Department of Transportation acting by and through its Transportation Director, hereinafter referred to as the STATE, and City of Huntsville, Alabama, hereinafter referred to as the UTILITY.

WITNESSETH:

WHEREAS, the STATE proposes a project of certain highway improvements in Madison County, Alabama, said project being designated as Project No. STPHV-4500() and consisting approximately of the following: Church Street Improvements from Monroe Street to Darryl Avenue and Pratt Avenue Improvements from Church Street to Washington Street; and

WHEREAS, the UTILITY is the owner of certain facilities located on private or public right-of-way, as applicable, at places where they will interfere with the construction of said project unless said facilities are relocated; and

WHEREAS, the Transportation Director has determined that the relocation of the facilities hereinafter referred to is necessitated by the construction of said project and has requested or ordered, as applicable, the UTILITY to relocate same; and

WHEREAS, under the laws of Alabama, the STATE is required to compensate the UTILITY for all or part of such relocation;

NOW, THEREFORE, the parties hereto agree as follows:

1. The UTILITY will relocate its facilities presently located within the right-of-way limits of the above referenced project in accordance with the UTILITY'S plans and specifications as approved by the STATE, so as to occasion the least possible interference with the progress of the project. The UTILITY'S plans, specifications and estimate of relocation cost are transmitted herewith and made a part hereof by reference.

2. The estimated cost for Engineering required by the relocation of utility facilities will be included in the total estimated cost of relocation set forth hereafter in this Agreement, and will be divided into three (3) phases: (a) Phase I - Concept; (b) Phase II - Design; and (c) Phase III - Construction. Each Phase of the Engineering work must be estimated and performed independently of the other. The three Engineering Phases will apply to work performed by the UTILITY'S Engineering Personnel and/or Consultant Engineers. The UTILITY will not proceed with any additional Phase of the required engineering work until it has received written notification from the STATE approving the completion of the previous Phase and written instruction to proceed with the next Phase.

**President of the City Council of the City
of Huntsville, AL**
Date: February 28, 2013

REVISED
October 23, 2012

SAHD No. 2
Page 2 of 6

3. The STATE has the right to notify the UTILITY, in writing, to cease Engineering work at any time it deems necessary. If so notified, the UTILITY shall cause all work to cease within four (4) working days and will invoice the STATE for the reimbursable work completed to date.

4. The UTILITY will conform to the provisions of the latest edition of the State of Alabama Department of Transportation Utility Manual, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such Utility Manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

5. The UTILITY will conform to the provisions of the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD), latest edition, as the provisions thereof are applicable hereto, for both installation and maintenance of such facilities. Such manual is of record within the Alabama Department of Transportation at the execution of this Agreement and is hereby made a part hereof by reference.

6. Code of Federal Regulations 23 C.F.R. Part 645 is hereby made a part hereof by reference and will be conformed to by the UTILITY as the provisions thereof are applicable hereto.

7. The UTILITY will observe and comply with the provisions of all Federal, State and Municipal laws and regulations as the provisions thereof are applicable hereto in the performance of work hereunder, including the Clean Water Act of 1987, the Alabama Nonpoint Source Management Program of 1989, and the regulations of the Environmental Protection Agency (EPA) and the Alabama Department of Environmental Management (ADEM). The UTILITY will procure and pay for all licenses and permits that are necessary for its performance of the work.

8. The UTILITY will perform the work of relocation:

- (a) ☐ by UTILITY'S own forces;
- (b) ☒ by contract let by the UTILITY;
- (c) ☐ by an existing written continuing contract where the work is regularly performed for the UTILITY; or
- (d) ☐ by combination of the preceding (as shown in detail on the estimate).

9. The detailed relocation cost estimate will be prepared on the State's Form U-10 or the UTILITY'S own form giving the same type of information and attached to this agreement. With respect to facilities located on the UTILITY'S private right-of-way, the STATE will reimburse the UTILITY for the actual cost of relocation, as may be adjusted below. With respect to facilities located on public right-of-way, the STATE will reimburse the UTILITY for all or part of the actual cost of relocation as required by the laws of Alabama, as may be adjusted below.

a. The STATE'S share of the engineering charges shall be limited to the "in-kind" work only. This agreement includes betterment ☐ Yes ☒ No

b. The total actual cost of relocation, including Engineering, whether the facilities are on private or public right-of-way, shall be adjusted for betterment, if any, as defined and provided for in 23 C.F.R. Part 645 above noted. E xcluding betterment costs, the total estimated cost of relocation, including Engineering, is \$ 1,832,223.59. The total estimated cost including betterment is \$ 1,832,223.59.

c. If an adjustment for betterment is applicable, the STATE will reimburse the UTILITY for 100.00 percent of the actual cost of relocation and the remaining 0.00 percent thereof shall be for the account of the UTILITY for betterment. If there are changes during construction and/or the actual construction cost percentage becomes substantially different from the construction estimate, the STATE reserves the right to recalculate the percentages at any time.

10. The method to be used for the development of relocation costs for this project is:

- (a) ☒ as established by Federal or State regulatory body;
- (b) ☐ as previously approved by the STATE; or
- (c) ☐ Lump Sum Amount (\$100,000 maximum).

The UTILITY will furnish the STATE, in writing, six (6) weeks prior to the State's project letting date a time frame for beginning and ending the required relocation work.

REVISED
October 23, 2012

SAHD No. 2
Page 3 of 6

11. The UTILITY will keep accurate and true records of all expenditures made by it in the process of such relocation. Records will be kept in accordance with 23 CFR Part 645 above noted, or in accordance with Part 30 and 31, Federal Acquisition Regulations, or in accordance with accounting practices acceptable to the STATE.

12. The UTILITY will, during the progress of the work and for three years from the date final payment is made, make its records available during normal working hours for examination and audit by representatives of the STATE and of the Federal Highway Administration to verify amounts and items covered in the reimbursement for relocation of facilities covered herein. Said records will be available for examination at

**City of Huntsville Engineering Department 320 Fountain Circle SW Huntsville,
Alabama 35801**

13. The UTILITY will, within six (6) months following completion of the relocation, furnish the STATE such papers, records, supporting documents and invoices as may be required by the State showing the cost of said relocation. The UTILITY will furnish the STATE a copy of its "as built" plans for the STATE'S records.

14. Upon receipt of such documents and accounts as may be required by the preceding paragraph and upon completion and acceptance of such verification as the STATE may deem necessary, the STATE will reimburse the UTILITY for the actual cost of such relocation as verified by the STATE. In the event the actual verified cost, as accepted, exceeds the estimated cost, the STATE may require a Supplemental Agreement to be executed between the parties prior to reimbursement of any amount in excess of the estimated cost.

15. Paragraphs numbered 16 through 20 set forth below are applicable to this Agreement only if some or all of the UTILITY facilities to be relocated hereunder are located on private right-of-way of the UTILITY; otherwise, such paragraphs are considered inapplicable to this Agreement and null and void.

16. Where the UTILITY has a compensable property interest in its existing location (herein referred to as private right-of-way) by reason of holding the fee, an easement or other property interest, evidence of such compensable property interest will be submitted to the STATE by the UTILITY for review and approval.

17. If the UTILITY is required to move all of its facilities from a portion of its private right-of-way, upon completion of the relocation provided for herein, the UTILITY will convey to the STATE by appropriate instrument the portion of its private right-of-way located within the right-of-way limits of the above referenced project.

18. In the event the UTILITY is not required to relocate any of its facilities which are located on its private right-of-way, the following provisions shall apply:

a. To the extent the UTILITY has the right to so agree the STATE will have the right to construct, operate and maintain a highway over and along the portion of the UTILITY'S private right-of-way located within the right-of-way limits of the above referenced project.

b. The subordination of the UTILITY'S private right-of-way to the right of the STATE to construct, operate, and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation, and maintenance of said highway, and to enable the STATE to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the UTILITY, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the STATE'S responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

REVISED
October 23, 2012

SAHD No. 2
Page 4 of 6

c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the UTILITY for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the UTILITY and the STATE.

19. If the UTILITY is required to relocate any of its facilities which are located on its private right-of-way to a new location on the same private right-of-way, the following provisions shall apply:

a. To the extent the UTILITY has the right to so agree, upon completion of the relocation provided for herein, the STATE will have the right to construct, operate and maintain a highway over and along the portion of the UTILITY'S private right-of-way located within the right-of-way limits of the above referenced project.

b. The subordination of the UTILITY'S private right-of-way to the right of the STATE to construct, operate and maintain said highway will be effective and operative only to such air, surface and sub-surface rights as may reasonably be required and are necessary for the construction, operation and maintenance of said highway, and to enable the STATE to control access to the highway where such control is established; otherwise this subordination agreement will in no wise affect and impair the rights of the UTILITY, its successors and assigns, in or to its private right-of-way, including but not limited to the right to install additional facilities over, under and across the highway; provided, however, that any installation of additional facilities will be subject to the STATE'S responsibility and right to make prior determination that any such additional facilities are located so as not to impair the highway or any planned highway improvement and so as not to interfere with the free and safe flow of traffic thereon.

c. It is mutually understood that the terms of this Agreement do not subordinate, affect or impair the rights of the UTILITY for reimbursement of the cost of such future relocation as may be required and necessitated by highway construction at some future date, as fully as if no subordination existed; however, such relocation will be in accordance with an additional agreement to be entered into at that time between the UTILITY and the STATE.

20. If the UTILITY is required to relocate any of its facilities which are located on its private right-of-way to a new location on public right-of-way or if any such facilities are to be retained in place within the public right-of-way due to this project, the following provisions will apply:

a. The cost of relocation will include reimbursement for acquisition of right-of-way by the UTILITY to place necessary guy wires and anchors on private lands adjacent to the highway right-of-way and the rights to cut, trim and remove, initially and from time to time as necessary, trees on private lands adjacent to the highway right-of-way which might then or thereafter endanger the facilities of the UTILITY.

b. Reimbursement for future relocation of the UTILITY'S facilities will be in accordance with State laws in effect at the time such relocation is made; provided, however, the UTILITY will be reimbursed for the cost of any future relocation of the facilities, including the cost of acquisition of equivalent private right-of-way if such future relocation is outside the highway right-of-way and such relocation is required by the STATE, and provided that the prior relocation from private right-of-way to public right-of-way was without compensation to the UTILITY for its compensable property interest in its private right-of-way.

21. The UTILITY is responsible, and will not hold the State of Alabama, the Department of Transportation, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns responsible for damages to private property, public utilities or the general public, caused by the conduct, in accordance with Alabama and/or Federal law, of the UTILITY, its agents, servants, employees or facilities.

22. By entering into this agreement, the UTILITY is not an agent of the State, its officers, employees, agents or assigns. The UTILITY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

23. In the event a Utility - Consultant Engineering Agreement for this project is entered into between the UTILITY and a Consulting Engineer, the following provisions will apply:

REVISED
October 23, 2012

SAHD No. 2
Page 5 of 6

a. The UTILITY has complied or will comply with and fulfill and will require the Consultant Engineer of the UTILITY to comply with and fulfill, all obligations, requirements, notifications, and provisions of the Utility - Consultant Engineering Agreement executed for this project work which are for the benefit or protection of the STATE.

b. The UTILITY has obtained or will obtain all approvals and authorizations required by the STATE which are provided for in the Utility - Consultant Engineering Agreement.

c. No reimbursement payments will be due and none will be made by the STATE until such Utility - Consultant Engineering Agreement is complied with faithfully by the UTILITY and Consulting Engineer.

24. The UTILITY will have a copy of this Agreement on the project site at all times while work is being performed under this Agreement.

25. Nothing contained in this Agreement, or in its execution, shall be construed to alter or affect the title of the STATE to the public right-of-way nor to increase, decrease or modify in any way the rights of the UTILITY provided by law with respect to the construction, operation or maintenance of its facilities on the public right-of-way.

26. Paragraph 26 set forth below is applicable to this Agreement only if Federal appropriated funds are available or will be available in the project by which the relocation required by this Agreement is necessitated.

27. In the event any Federal Funds are utilized for this work, the following certification is made:

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 U.S.C. Section 1352. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29. Exhibit N is attached hereto and made a part hereof.

REVISED
October 23, 2012

SAHD No. 2
Page 6 of 6

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, officials and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

WITNESS: _____

RECOMMENDED FOR APPROVAL:

BY: _____

Johnny L. Harris
Division Engineer

City of Huntsville, Alabama

(Legal Name of Utility)

BY: _____

(Signature and Title)

BY: _____

Robert G. Lee
Utilities Engineer

Tommy Battle

(Typed Name)

Mayor

(Typed Title)

APPROVED AS TO FORM:

BY: _____

Jim Ippolito, Jr.
Chief Counsel,
Alabama Department of Transportation

308 Fountain Circle SW

(Address)

Huntsville, AL. 35801

(City, State, Zip)

(Telephone)

STATE OF ALABAMA DEPARTMENT OF
TRANSPORTATION ACTING BY AND
THROUGH ITS TRANSPORTATION DIRECTOR

John R. Cooper
Transportation Director

The within and foregoing Agreement is hereby approved on this _____ day of _____, 20 ____.

Robert Bentley
GOVERNOR
STATE OF ALABAMA

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

- a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.
- b. In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.

Additional ADR Clause

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative hearings or where appropriate, private mediators.